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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,636	07/17/2003	Mark Rule	CMXZ 2 00019	1869
7590	06/01/2004		EXAMINER	
Scott A. McCollister Fay, Sharpe, Fagan, Minnich & McKee, LLP 7th Floor 1100 Superior Avenue Cleveland, OH 44114-2518			BOYKIN, TERESSA M	
			ART UNIT	PAPER NUMBER
			1711	
			DATE MAILED: 06/01/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/621,636	RULE, MARK
	Examiner Terressa M. Boykin	Art Unit 1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 July 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4, 6-9, 12-17 and 19 is/are rejected.
- 7) Claim(s) 5, 10, 11, 18, 20 and 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-17-03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, 3, 4, 6, 7, 8, 9, 12-17, 19, are rejected under 35 U.S.C. 102(b) as being anticipated by **US 5846642** note abstract, cols. 2-5, 9,10, examples and claim 1.

US 5846642 discloses polyester film for thermal lamination, comprising: a polyester A of 140 to 245 C. in melting point mainly composed of ethylene terephthalate and/or ethylene isophthalate, a thermoplastic elastomer mixed at a ratio by weight of 81:19 to 98:2 with the elastomer comprising particles having a particle size ratio of 2 to 100 is excellent not only in formability but also in act resistance and taste property, and hence ideal for application on to the inner faces of packages, containers, etc.

Moreover, in view of the taste property, the oligomer content of the polyester of the present invention is recommended to be preferably 0.8 wt % or less, more preferably 0.7 wt % or less, further more preferably 0.6 wt % or less. If the oligomer content of the copolymerized polyester is more than 0.8 wt %, the taste property is poor. The method for keeping the oligomer content in the polyester at 0.8 wt % or less is not especially limited, but any method similar to any of the above mentioned methods for decreasing the aldehyde content of the copolymerized polyester can be adopted.

The reference notes that the polyester film of the present invention may be laminated on to a metallic sheet substrate, to obtain a laminated metal sheet which is, then, formed into metallic cans by drawing or drawing with ironing, the metallic cans can be ideally used as negative pressure cans and positive pressure cans since a metal is used as the substrate. Especially when a steel sheet, aluminum sheet or any of these sheets treated on the surface is used as the substrate to be laminated with the polyester film, the metallic sheet can be easily formed and the cans obtained is preferably excellent in impact resistance.

The metal of the reference is not especially limited, but in view of formability, can be preferably a metal mainly composed of iron or aluminum, etc. In the case of a metallic sheet mainly made of iron, it can be covered on the surface with an inorganic oxide layer to enhance adhesiveness and corrosion resistance, for example, a chemical conversion coating by chromic acid treatment, phosphate treatment, chromic acid/phosphate treatment, electrolytic chromic acid treatment, chromate treatment or chromium chromate treatment, etc. Especially chromium oxide hydrate of 6.5 to 150 mg/m² in terms of metal chromium is preferable, and furthermore, an extendible metal plating layer of, for example, nickel, tin, zinc, aluminum, gun metal or brass, etc. can also be formed. In the case of tin plating, the preferable amount of plating is 0.5 to 15 g/m², and in the case of nickel or aluminum, 1.8 to 20 g/m².

The polyester film for thermal lamination of the present invention is excellent in formability, adhesiveness, impact resistance and taste property as described before, and can be easily thermally laminated on to not only metallic substrates but also various other substrates such as paper sheets, plastic sheets, fibers and non-woven fabrics, for ideal use as containers and other products.

The polyester film for thermal lamination of the present invention used to be thermally laminated on to a substrate is excellent in formability, adhesiveness, impact resistance and taste property, and can be ideally used on the inside surfaces of food packages and drinking containers. Especially a metallic sheet with the polyester film laminated on a metallic substrate can be ideally used for metallic cans produced by various forming

Furthermore, even if the polyester film is laminated on to such a non-metallic substrate of paper, plastic, fibrous or non-woven fabric material, etc., it is unprecedentedly excellent in taste property, impact resistance and formability, and can be ideally used for containers, cans and other packages.

With regard to claim 7 note paragraph 2 lines 14 –40 and paragraph 9 lines 1-3.

With regard to claims 8 –10 note col. 10 lines 17-19.

With regard to claims 12-13, 17 note that the resulting polyester is extruded and used as a moldable article.

With regard to claims 15 and 16 see paragraph 10 lines 4-19.

With regard to claims 19 note paragraph 9 1-20.

Thus, the references discloses a method for producing a polyester container made from a film having laminated thereon a metallic substrate which may be an inorganic oxide hydrate. Note that applicants wording in claim 1, i.e. "into the polyester" and

applicants' wording in claim 21 "including an additive" although different may be interpreted as congruent as to the position or role the additive exist therein. Thus, the addition of the laminant layer may be interpreted as an "additive" applied to the polyester. Thus, in view of the above, there appears to be no significant difference between the reference and that which is claimed by applicant(s). Any differences not specifically mentioned appear to be conventional. Consequently, the claimed invention cannot be deemed as novel and accordingly is unpatentable.

Objected Claims

Claims 5, 10, 11, 18, 20, 21, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Terressa Boykin whose telephone number is 571 272-1069. The examiner can normally be reached on Monday through Friday from 6:30am to 3:00pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. The general information number for listings of personnel is (**571-272-1700**).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tmb


Examiner Terressa Boykin
Primary Examiner
Art Unit 1711